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ALEXANDER L. STEVENS,
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ANDREW WOO,

Petitioner.

— against —

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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UNITED STATES SUPREME COURT
1983 TERM

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANDREW WOO,

Petitioner-Appellant,

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee.

Petition
For Writ
of
Certiorari

Docket #

QUESTIONS PRESENTED

1. Were petitioner's fourth amendment rights violated where federal agents, concededly lacking probable cause to arrest when they visited petitioner's business office during regular business hours, attempted to bootstrap probable cause from a brief, unexceptional interview in which petitioner, whose capacity to fully understand English was questioned by the interviewing agent, subsequently gave some alleged evasive or contradictory answers?

2. Are the Supreme Court's holdings of no

probable cause in Wong Sun (371 US 471 (1963))
Sibron (392 US 62 (1968)) and Di Re (332 US 581
(1948)), all relied on by petitioner as applicable
here, still good law?

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ORDER AND DECISION BELOW

The United States Court of Appeals for the Second Circuit by order entered October 28, 1983, contained as Appendix A, affirmed petitioner's conviction of conspiring to import a controlled substance into the United States in violation of 21 U.S.C. 952(a)(1), 963 (1976) and 18 USC 2 (1976). The Court of Appeals further affirmed the denial by the District Court (Weinstein, J.) of petitioner's motion to suppress certain physical evidence consisting of a small piece of paper with certain notations seized following petitioner's arrest.

STATEMENT OF THE CASE

On October 28, 1983, the U.S. Court of Appeals for the Second Circuit affirmed Petitioner's conviction entered on March 1, 1983 in the United States District Court for the Eastern District of New York, after a nine-day trial before Judge Jack B. Weinstein and a jury, and the trial court's denial of Petitioner's motion for a directed ver-

dict of acquittal, and motion to suppress certain physical evidence seized upon Petitioner's arrest.

The Court of Appeals granted Petitioner's application pursuant to F.R.A.P. 41 for a stay of the court's mandate pending consideration of his Petition for a writ of certiorari in this court, and Petitioner remains free on bail.

A superseding indictment was filed on or about December 22, 1982 charging 5 defendants with two counts: One count of conspiracy to import a quantity of heroin hydrochloride from Thailand into the United States (21 U.S.C.952(a); 960(a)(1); 963) and one count of importation of the said heroin hydrochloride (21 U.S.C. 952(a); 960(a)(1); 18 U.S.C.2).

The trial began on January 3, 1983 and concluded on January 14, 1983 when the jury found ANDREW WOO and another defendant, FRANKLIN LIU, guilty on counts "1" and "2". Another defendant, LUIGI TURANO, was acquitted on both counts. Just prior to trial, defendant MAYURET TANKHANCHOPHAT pleaded guilty to both counts, and the case

against co-defendant ANTONIO TURANO was severed at the government's request.

On March 1, 1983, Judge Weinstein sentenced petitioner to a concurrent sentence of ten years imprisonment and ten years special parole on counts "1" and "2".

The government's case involved an alleged conspiracy to import, and the alleged importation of, 15 kilograms of heroin into the United States. According to government agents' testimony, in October, 1982, drug enforcement agents in Bangkok, Thailand learned that defendant MAYURET planned to import heroin into the United States. Agents monitored MAYURET's activities and hired an informant to arrange for transport to the United States. An undercover government agent acted as courier.

On October 13, MAYURET delivered a suitcase with the heroin to an agent in Bangkok. On October 14, 1982, the undercover agent brought the suitcase into the United States, and by prearrangement, was met at Kennedy Airport and

taken to a hotel nearby. After chemical analysis, the heroin was removed and replaced with sham materials and sample heroin.

On October 15, MAYURET arrived at Kennedy and proceeded to a hotel on West 57th St. in Manhattan. After arriving, MAYURET repeatedly attempted to telephone defendant FRANKLIN LIU at his home and office.

On Saturday morning October 16, defendant FRANKLIN LIU was observed visiting MAYURET at her hotel. Shortly after FRANKLIN LIU's visit with her, MAYURET delivered to an agent a set of keys to a Ford registered to defendant LUIGI TURANO's wife. MAYURET instructed the agent to put the suitcase in the car trunk and return the keys to her.

FRANKLIN LIU was next followed by government agents to West 34th St. where he was observed entering an office building and leaving several minutes later in the presence of two other men, later identified as petitioner and ANTONIO TURANO (LUIGI's brother). The three men were observed on

34th St. in broad daylight; no conversations were overheard, and the observing agent lost sight almost immediately, without any awareness whether the men remained together. The same day, an agent delivered the car keys to other agents, and the car was picked up outside MAYURET's hotel and driven to the DEA garage.

Sunday morning, October 17, 1982, an agent returned the car to a place outside the hotel. The agent went to MAYURET's room and returned the keys. MAYURET was next observed and videotaped leaving the hotel and walking on 57th St. past the Ford. Defendant FRANKLIN LIU then visited her at the hotel, and left soon after. FRANKLIN LIU was observed and videotaped crossing 57th St. and entering a building at 457 W. 57th St., where he went to ANTONIO TURANO's apartment. LUIGI TURANO then arrived at ANTONIO's apartment and, minutes later, was observed and videotaped going to and driving away in the Ford, containing the subject suitcase in the trunk.

One Gaetano Guiffida, arrested but not

indicted, and a male caucasian known only as "Peter" (apparently never arrested) were also present in ANTONIO's apartment. An unidentified Oriental male was also seen by the elevator operator going to ANTONIO TURANO's apartment. LUIGI later testified it was petitioner.

Agents followed LUIGI TURANO as he drove to a garage on East 86th St., where he was seen dialing a pay phone and overheard to state, "I'm okay, I've got it." LUIGI was then arrested by government agents who, upon arrest, seized his wallet, in which they found the Ford trunk key. LUIGI TURANO informed the arresting agents he had received the keys earlier Sunday from his brother ANTONIO, who instructed him to drive to that garage.

MAYURET was arrested later Sunday evening at the hotel. ANTONIO TURANO and Guiffrida were arrested at ANTONIO's home Sunday afternoon. Janice Turano (LUIGI's wife) was also arrested Sunday. FRANKLIN LIU and petitioner were arrested the next day, Monday, at a business office suite where each of them, plus others, maintained offi-

ces on Fifth Ave. in New York. As noted, the man named "Peter", also present in ANTONIO's apartment Sunday, was apparently never arrested.

On Monday, October 18, at about 3 P.M., petitioner WOO was arrested, and then brought before a U. S. Magistrate in the Eastern District of N.Y. At the time of his warrantless arrest, there was no "probable cause" as required by the Fourth Amendment to the U.S. Constitution. A summary of the documents filed by the government and relied upon in connection with petitioner's arrest reveals that petitioner's name first appeared in a complaint sworn to October 18, 1982 by Agent Jordison of the DEA.

Prior to October 18, the government had prepared and filed several documents without reference to petitioner. The complaint by Agent Jordison against WOO, issued after WOO'S warrantless arrest on October 18, contains a few sketchy and general references to WOO by name. First, the complaint suggests WOO was seen on Saturday, October 16, near ANTONIO's office on

West 34th St. in the presence of ANTONIO TURANO and FRANKLIN LIU.

The complaint next states that an "oriental male" supposedly identified subsequently as WOO was "among a number of individuals" who visited ANTONIO's apartment Sunday morning. WOO is described as openly identifying himself by name to an elevator employee in the building where ANTONIO resided. Again, WOO is described as moving about routinely in broad daylight without any untoward suggestion.

WOO and FRANKLIN LIU concededly each maintained offices in a business office suite at 366 Fifth Ave. with a common telephone switchboard apparently used by several business people, including WOO and FRANKLIN LIU.

Jordison's complaint also alleges that ANTONIO TURANO, after his Sunday arrest purportedly uttered a statement that he had lent his car "to a friend of his named Andy" at some unspecified time.

Agent Henley testified at the suppression

hearing upon WOO's motion claiming an absence of "probable cause" for his warrantless arrest.

Henley conceded on direct examination that he went to visit WOO's business office on Monday afternoon, October 18, without the intention of arresting WOO. Thus, up to the time government agents visited WOO at his office, the DEA agents themselves concededly did not believe probable cause existed to arrest WOO.

Henley, at the hearing, described a relatively short conversation he said he conducted with WOO at WOO's office. Curiously, this alleged interview appears nowhere in the Jordison complaint against WOO.

In any event, Henley's brief interview with WOO did not provide any further sufficient basis to establish the requisite probable cause to arrest WOO. First, Henley testified that WOO "identified himself" and voluntarily agreed that "I [Henley] could ask my questions and he would answer". Then Henley asked if WOO "knew a Mr. ANTONIO TURANO", and WOO "told me [Henley] he did". WOO then told

Henley readily that "Mr. TURANO was both a friend and a business associate."

Henley then began to testify that "I then asked Mr. WOO if he had ever borrowed...", but Henley then changed his testimony in mid-stream and said he allegedly "asked Mr. WOO if he owned a car". Henley then testified WOO allegedly "told me that he did not."

Henley's testimony on this point is, at most, marginal and strained. He suggested no relevant reason to ask WOO if he owned a car, inasmuch as only LUIGI's wife's car was involved in the transaction. Nor did the government suggest that WOO, after openly identifying himself, agreeing to answer Henley's questions and freely acknowledging his prior business and social relationship with ANTONIO TURANO, had any reason to deny owning a car when in fact WOO owned his own car. The government at no time even tried to argue non-ownership of a car by WOO. Moreover, and all the more reason not to value Henley's testimony on this point, is the fact that, several lines later

in the hearing transcript, Henley himself concedes WOO told him, "...I do own a car".

Henley next asked WOO if he ever borrowed TURANO's car. Henley testified "He said, no, that he had never borrowed TURANO's car". Henley now presented WOO with ANTONIO TURANO's dubious and unfounded alleged post-arrest statement that ANTONIO TURANO "lent his car to Andy".

According to Henley, WOO said "Why should I borrow his car? I have my own car." Henley pressed the issue with another question; "But you never borrowed Mr. TURANO's?" To which WOO replied unconditionally, "No".

Thus, WOO repeatedly denied borrowing TURANO's car. WOO's firm and open denial to Henley about borrowing the car merely reinforced the inherent untrustworthiness of TURANO's unverified alleged post-arrest remark.

A few pages later in the hearing transcript, Henley testified he didn't recall TURANO "specifically mentioning the keys, just the fact the car was loaned". Agent Jordison later contra-

dicted Henley at the suppression hearing and speculated that "lending could be lending him the car keys...". This contradiction in the suppression hearing testimony of two crucial government agents illuminates the nature of the government's grasping effort to bootstrap an inherently suspect post-arrest statement by ANTONIO TURANO, which the government knew or should have known to be unfounded prior to WOO's arrest, into an over-aggressive ploy to create non-existent probable cause.

On the record here, the government had no basis for relying upon ANTONIO TURANO's alleged post-arrest statement that "he lent his car to Andy" when determining whether probable cause existed for WOO's warrantless arrest.

First, the veracity of TURANO's alleged post-arrest statement was inherently suspect. ANTONIO TURANO's transparent motivation for shifting the blame to others after his arrest should have been manifest. Bruton v. United States, 391 U.S. 123, 136, 88 S.Ct. 1620, 1628 (1968).

Second, the government's own file confirmed

that the car was in the government's physical possession on Saturday until Sunday when LUIGI entered the parked vehicle. After an agent returned the keys to MAYURET Sunday morning, the car was continuously under government surveillance and WOO admittedly was never seen in or even near the car. The government's own awareness belied any belief TURANO had lent his car to WOO.

Third, the government file showed FRANKLIN LIU, not WOO, visiting MAYURET moments before she gave the agent car keys Saturday morning. The likelihood that FRANKLIN LIU delivered keys to MAYURET at that time plainly refuted ANTONIO's alleged post-arrest statement the next day that "he lent the gray Ford...to a friend of his named "Andy". Moreover, the government file also indicated MAYURET telephoned FRANKLIN LIU, not WOO, at FRANKLIN LIU's home repeatedly and asked for FRANKLIN LIU as well on the business office switchboard phone. These facts, all known to the government prior to WOO's arrest, made it even more unlikely that ANTONIO TURANO's alleged post-

arrest statement was worthy of any semblance of belief.

Fourth, ANTONIO TURANO's alleged post-arrest statement did not specify any time he allegedly "lent his car to Andy". Absent a time frame, the probable cause value of ANTONIO's alleged statement could hardly be cognizable.

Returning to Agent Henley's testimony at the probable cause hearing, Henley said he asked WOO if "he had seen Mr. TURANO recently", without explaining what he meant by the term "recently". Woo said "that he had not".

Next, WOO unhesitatingly told Henley he knew where TURANO's office on 34th St. was located. So far, nothing in Henley's own version of his conversation with WOO even remotely resembled any admission of criminal conduct by WOO.

Henley next allegedly asked WOO a few quick questions about visiting ANTONIO's office. At this point Henley halted the conversation and said: "Wait a minute, now. He has a bathroom and a bathtub in his office?". Henley was now

obviously very much aware that his conversation with WOO was hampered by a language barrier, as demonstrated by Henley's own testimony:

"At that point I stopped and I said, "Mr. WOO, I don't speak Chinese. Do you understand my questions, because if you don't understand my English we can't continue the conversation."

Can there be any other explanation for Henley's own decision to "start...again"? The government offered no such explanation, and petitioner submits there could be none. WOO reportedly said he could understand Henley, "so I [Henley] started again."

According to Henley, WOO then said he saw ANTONIO Saturday at ANTONIO's office. WOO then said "I left with Mr. TURANO". Finally, Henley also suggested that FRANKLIN LIU had been outside ANTONIO TURANO's office at the time with ANTONIO TURANO and WOO, and WOO acknowledged FRANKLIN LIU's presence.

WOO's answers to Henley's questions essentially reflected information then available to the government. In substance, WOO acknowledged he

knew ANTONIO TURANO as a prior business and social acquaintance, and he saw ANTONIO TURANO and FRANKLIN LIU Saturday morning, outside ANTONIO TURANO's office.

Any temporary inaccuracy or hesitation in petitioner's responses was revealed as insubstantial, particularly Henley's own self-initiated effort in mid-conversation to assure WOO's understanding of the questions. Henley admitted WOO "speaks with an accent" and Henley also interrupted the flow of the conversation to assure himself WOO understood him.

This unexceptional conversation offered no basis to believe petitioner was engaged in any criminal activity. Henley's conversation itself produced no tangible evidence against WOO nor anything remotely resembling an admission of guilt. WOO merely repeated information already known to the government--prior information, agents themselves conceded, which failed to provide probable cause to believe WOO was engaged in criminal conduct:

"Q [by prosecutor]: "When you [Henley] went to the business premises [of WOO], had you determined as you went there that you were going to effect the arrest of Mr. WOO?"

A Not positively, no."

Henley never even bothered to ask WOO what subject, if any, WOO discussed Saturday with ANTONIO TURANO and FRANKLIN LIU. It may surely be inferred that, if Henley attached any significance to his conversation with WOO, he would have asked WOO about the nature of any conversation outside ANTONIO TURANO's office among FRANKLIN LIU, ANTONIO and WOO. The fact is he did not.

In sum, the government could suggest nothing more on "probable cause" than WOO'S mere association with previously-known business acquaintances, observed by agents in broad daylight absent any suggestion of non-routine conduct by WOO. The government also argued petitioner tried to deny his Saturday presence to Henley, but, even so, it is at least equally inferable he may have done so for innocent reasons, including a natural desire to avoid being unfairly implicated in activities

in which he did not participate, or avoid becoming a government witness in a criminal proceeding.

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI

The Court of Appeals decision affirming petitioner's conviction and denial of his suppression motion in the District Court was in conflict with the applicable decisions of this Court, and other federal courts of appeal on the question of probable cause for warrantless arrests under the Fourth Amendment.

PETITION

Denials of participation cannot substitute for direct or circumstantial proof of criminal involvement. Even alleged false exculpatory remarks to law officers are wholly insufficient evidence of guilt and may be at least as consistent with innocence as guilt:

"...this Circuit in *United States v. Kearse*, 444 F.2d 62 (2 Cir. 1971), and *United States v. McConney*, 329 F.2d 467, 470 (2 Cir. 1964), has held that falsehoods told by a defendant in the hope of extricating himself from suspicious circumstances are insufficient proof on which to convict where other evidence of guilt is weak and the evidence before the court is as hospitable to an interpretation consistent with the defendant's

innocence as it is to the Government's theory of guilt."

(U.S. v. Johnson, 513 F.2d 819, 824 (2d Cir.1975))

Moreover, association with guilty parties or presence at a crime scene combined with alleged false exculpatory statements are still insufficient evidence of culpable conduct:

"It would place too much weight on defendant's extra-judicial exculpatory statement to authorize a conviction based almost solely on the fact that part of the statement, not involving the corpus delicti of the crime, was shown to be false. The other evidence of guilt was extremely weak, and we do not think the statement was sufficient independent proof to justify denial of the motion for acquittal."

(U.S. v. McConney, 329 F.2d 467, 470 (2d Cir.1964))
Accord: United States v. Kearse, 444 F.2d 62, 64 (2d Cir. 1971).

Assuming arguendo Henley fairly recounted a few temporarily inaccurate or even false answers to his questions (a suggestion unsupported by the record discussed above), a few such exculpatory statements as such are not probative proof of criminal conduct, or the basis to establish probable cause. United States v. Place, 660 F.2d 44, 49 (2d Cir.1981), affirmed on other

grounds, U62 US ___, 103 S.Ct. 2637 (1983).

As this Court has often held, mere suspicion by an arresting officer does not satisfy the basic Fourth Amendment probable cause requirement:

"It is basic that an arrest with or without a warrant must stand upon firmer ground than mere suspicion."

(Wong Sun v. United States, 371 U.S. 471, 479, 83 S.Ct. 407, 413 (1963))

"A bald and unilluminating assertion of suspicion...is entitled to no weight in appraising the Magistrate's decision [as to probable cause]."

(Spinelli v. United States, 393 U.S. 410, 414, 89 S.Ct. 584, 588 (1969))

An inadequate assertion of suspicion cannot give additional weight to otherwise insufficient allegations:

"But just as a simple assertion of police suspicion is not itself a sufficient basis for a magistrate's finding of probable cause, we do not believe it may be used to give additional weight to allegations that would otherwise be insufficient".

(Spinelli v. United States, 393 US at 418, 89 S.Ct. at 590)

It is axiomatic that mere association with persons suspected of criminal activity, essentially all information possessed by the government about

WOO upon his arrest, cannot establish probable cause to arrest:

"The argument that one who "accompanies a criminal to a crime rendezvous" cannot be assumed to be a bystander, forceful enough in some circumstances, is farfetched when the meeting is not secretive or in a suspicious hide-out but in broad daylight in plain sight of passers-by, in a public street of a large city, and where the alleged substantive crime is one which does not necessarily involve any act visibly criminal. If Di Re had witnessed the passing of papers from hand to hand, it would not follow that he knew they were ration coupons, and if he saw that they were ration coupons, it would not follow that he would know them to be counterfeit. Indeed it appeared at the trial to require an expert to establish that fact. Presumptions of guilt are not lightly to be indulged from mere meetings."

(United States v. Di Re, 332 U.S. 581, 593, 68 S.Ct. 222(1948)

Again, in Sibron v. United States, 392

U.S.40,62-63,88 S.Ct.1889(1968), this Court reversed a conviction and stressed that:

"The officer was not acquainted with Sibron and had no information concerning him. He merely saw Sibron talking to a number of known narcotics addicts over a period of eight hours. It must be emphasized that Patrolman Martin was completely ignorant regarding the content of these conversations, and that he saw nothing pass between Sibron and the addicts. So far as he knew, they might indeed "have been talking about the World Series." The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of

reasonable inference required to support an intrusion by the police upon an individual's personal security."

Again, in United States v. Chadwick, 532 F. 2d 773,784 (1st Cir. 1976), aff'd on other grounds 433 U.S.1(1976), this crucial principle was reaffirmed:

"Association with known or suspected criminals does not, in and of itself, establish probable cause. [citations omitted]"

Similarly, the Second Circuit affirmed a district court's determination of no probable cause in United States v. Rosario, 543 F. 2d 6,9 (2d Cir. 1976):

"The inference that persons who talk to known dealers in narcotics have engaged in criminal traffic in narcotics "is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security".

As put succinctly by the Ninth Circuit in United States v. Linnear, 464 F. 2d 355,356 (9th Cir.1972):

"There was no justification for the warrantless arrest of defendant who was, for all that appears, a mere bystander or accompanier"

The government referred to an alleged statement

by co-defendant ANTONIO TURANO after his arrest that TURANO at some unspecified time supposedly lent his car "to a friend of his named Andy". The alleged comment was purportedly made by TURANO on Sunday at about noon. WOO was arrested at 3 p.m. Monday. TURANO's alleged remark cannot reasonably be utilized by the government as any semblance of a probable cause underpinning for WOO's warrantless arrest (pages 12-14 above).

Petitioner's warrantless arrest was devoid of probable cause and was, in fact, based on prosecutorial overreaching and hastiness. Illustrative of that overzealousness is the fact of the government's forced release of both Gaetano Guiffrida and Janice Turano soon after their arrests, without any indictments issuing against them. The government did not even choose to arrest "Peter", another person in ANTONIO's apartment Sunday morning. Significantly, WOO's arrest was without warrant, although more than 24 hours elapsed between the arrests of co-defendants and petitioner. The government had considerable time to seek an

arrest warrant against petitioner, and it did secure various search warrants against others based upon affidavits sworn to Sunday. If these other warrants were obtainable on October 17, why didn't the government apply to the Court for an arrest warrant for WOO?

An apparent answer to this question was offered by this Court in Wong Sun, supra, (371 U.S.at481, 83S.Ct.at414):

"It is conceded that the officers made no attempt to obtain a warrant for Toy's arrest. The simple fact is that on the sparse information at the officers' command, no arrest warrant could have issued consistently with Rules 3 and 4 of the Federal Rules of Criminal Procedure, 18 U.S.C.A."

The requirement of probable cause for an arrest is no less stringent for warrantless arrests than arrests with warrants. Wong Sun, supra, 371 U.S.at478-480

Indeed, several courts have suggested that a warrantless arrest at a home or private office should be discouraged absent exigent circumstances by no means present here. See United States v. Watson, 423 U.S. 411, 423 (1975); United States

v. Reed, 572 F. 2d 412, 422 (2d Cir. 1978);
United States v. Campbell, 581 F. 2d 22, 25 (2d
Cir. 1978).

The government's speculative information about WOO when he was arrested constituted nothing more than guesswork or a possible government theory of "guilt by association".

WOO's allegedly false exculpatory statements to Henley cannot be bootstrapped with WOO's mere association with suspected criminals to generate probable cause for arrest where none exists. Denials of association are not proof of criminal conduct. U.S. v. Place, supra, 660 F.2d at 49, (in which a defendant's telling an undercover officer that the defendant recognized the officer's identity was one of probable cause claims held insufficient).

Even on factual records more substantial than here, federal appellate tribunals have refused to sustain a probable cause finding for arrest or search warrant issuance. As the Second Circuit noted in United States v. Place, supra, 660 F.2d

at 49:

"Nervous behavior, travelling from a so-called "source city," minor errors on a baggage tag, telling an undercover officer that his identity as such was recognized by the suspect, and the factors involved here may be abnormal, but by themselves they are clearly not enough to constitute probable cause."

In United States v. Ceballos, 654 F.2d 177,185 (2d Cir. 1981), the Second Circuit found probable cause absent on "The facts known to the agents: that Ceballos entered the three family house in which Zea lived at 11:00 P.M., left 5 to 10 minutes later carrying a paper bag,...looked up and down the street "in a curious manner" and was hispanic...":

"They did not provide probable cause to believe he was committing a crime. Moreover, while the brown paper bag has been described as a common container for narcotics, the carrying of a paper bag does not provide an "objective basis" from which it can be reasonably concluded that a narcotics offense is being committed...Nor can the short duration of a visit without more facts than were known to the agents here provide probable cause for arrest."

The Ninth Circuit in United States v. Jit Sun Loo, 478 F. 2d 401, 404-405 (9th Cir. 1973) has held:

" this court cannot find that the customs officers had "reasonable grounds" or "probable cause" to make the arrest of appellants Jit Sun Loo and Ah Sooi Wong in their room at the Hilton Inn on the evening of January 27, 1972. The circumstances of this case could raise a suspicion in the minds of the customs agents that appellants had or were about to have some connection with the Honolulu defendants, but it is axiomatic that mere suspicion will not justify an arrest without a warrant."

In United States v. Bazinet, 462 F. 2d 982, 988 (8th Cir.1972), the Eighth Circuit ruled probable cause for arrest was lacking:

"We conclude, on the contrary, that there was not probable cause for Bazinet's arrest. Captain Graff admitted at the hearing on the motion to suppress that he had no information whatever to connect Bazinet with the commission of any crime, other than the fact that an officer who accompanied Graff to the scene recognized Bazinet as a convicted felon. Furthermore, Graff testified that the major reason he arrested Bazinet was Knox's presence in Bazinet's car. The government argues that the contents of the paper bag gave probable cause to believe that all three occupants of the VW were engaged in illegal conduct. If this reason ever gave probable cause with respect to Bazinet, it was dissipated when Graff searched the van initially and found no additional evidence of criminal activity on Bazinet's part".

After measuring the information known to the government to justify WOO's arrest, and drawing every reasonable inference about what a prudent man in the circumstance might conclude, there was

no credible foundation to suggest WOO was engaging in alleged criminal activity at the time of his arrest. Even a "suspicion" of such involvement cannot be inferred merely from his prior business and social acquaintance and presence with two other defendants, and the inconclusive conversation with Henley just prior to WOO's arrest.

Absent requisite probable cause, an allegedly incriminating piece of paper seized after WOO's arrest could not properly have been allowed into evidence at trial (Wong Sun v. United States, supra, 371 U.S. at 484, 83 S.Ct.at 415), since the paper, for what it is worth, did not come from a source independent of the tainted arrest:

"A search unlawful at its inception may [not] be validated by what it turns up."

As this Court found in Sibron v. United States, supra, 392 U.S. at 62-63:

"Nothing resembling probable cause existed until after the search had turned up the envelopes of heroin. It is axiomatic that an incident search may not precede an arrest and serve as part of its justification....Thus the search cannot be justified as incident to a lawful arrest."

CONCLUSION

The petition for a writ of certiorari should be granted on the substantial ground that the decision of the Court of Appeals affirming petitioner's conviction conflicts with applicable decisions of this Court and other federal appellate courts prohibiting warrantless arrests without probable cause.

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of October, One Thousand Nine Hundred and Eighty-Three.

PRESENT:

HON. RICHARD J. CARDAMONE,
HON. LAWRENCE W. PIERCE,
HON. GEORGE C. PRATT,

Circuit Judges.

-----x
UNITED STATES OF AMERICA,

Appellee,

-v-

ORDER

LUIGI O. TURANO,

83-1095

Defendant,

-and-

ANDREW WOO and FRANKLIN LIU,

Defendants-Appellants.

-----x
Andrew Woo, defendant-appellant, appeals from a judgment of the United States District Court for the Eastern District of New York (Weinstein,

C.J.), entered March 1, 1983, convicting Woo, after jury trial, of conspiring to import a substantial quantity of heroin into the United States in violation of 21 U.S.C. §§ 952(a), 960(a)(1), 963 (1976), and of importing heroin into the United States in violation of 21 U.S.C. §§ 952(a), 960(a)(1), 963 (1976) and of 18 U.S.C. § 2 (1976).

Woo contends that he was arrested without probable cause. Consequently, he argues, the trial judge should not have admitted into evidence against him an incriminating piece of paper which was seized from him incident to his arrest. Woo also claims there was insufficient evidence to convict him and, hence, Judge Weinstein erred in denying his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29.

A judicial assessment of whether probable cause to arrest existed must be made "on the basis of the collective knowledge of the police rather than that of the arresting officer alone." United States ex rel. LaBelle v. LaValle, 517 F.2d 750,

753 (2d Cir. 1975), cert. denied, 423 U.S. 1062 (1976). Moreover, courts must evaluate collectively and cumulatively the information relied upon by the arresting officers. United States v. Olsen, 453 F.2d 612, 616 (2d Cir.), cert. denied, 406 U.S. 927 (1972). Herein, the evidence against Woo indicates that "the facts available to the officers at the moment of the arrest were 'sufficient to warrant a prudent man in believing that the petitioner had committed . . . an offense.'" LaValle, 517 F.2d at 753 (quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)). Throughout the weekend prior to his arrest, Woo constantly met with his co-conspirators as the conspiracy to import heroin unfolded. Moreover, a co-defendant arrested prior to Woo's arrest stated that he had lent a car to Woo. The government, through its searches of an informant coupled with other evidence, had reason to believe that the conspirators intended to use the car to store and transport the heroin. Later, when Woo was interviewed by a United States agent, he gave contradictory and

false answers. Hence, viewing the evidence cumulatively and "in the light most favorable to the government," United States v. Jackson, 652 F.2d 244 (2d Cir. 1981), we conclude that the district judge correctly found that the government had probable cause to arrest Woo. Consequently, Judge Weinstein did not err in admitting into evidence against Woo the piece of paper seized from Woo's wallet incident to his arrest.

We also reject Woo's claim that the evidence was insufficient to sustain a conviction for the crimes charged. In reviewing a conviction, this Court must determine whether, "viewing the evidence in the light most favorable to the Government, any rational trier of facts could have found the defendant guilty beyond a reasonable doubt." United States v. Leroy, 687 f.2d 610, 616 (2d Cir. 1982), cert. denied, 103 S.Ct. 822 (1983). Herein, Woo was not merely present at the commission of the crime; rather, he continually met with his co-conspirators at important junctures as the importation conspiracy was executed.

Moreover, he served as an important link between different parties to the conspiracy. In addition, the note found in his wallet bore the following: "Mrs. Mayures, Thangkungjanapas 60,000." Evidence was presented that Thangkungjanapas had arranged to have the heroin imported into the United States from Thailand. The jury reasonably could have concluded that the number 60,000 represented the per kilo importation price of heroin, since the govenment offered evidence to this effect. In short, there was substantial evidence from which the jury could find Woo guilty beyond a reasonable doubt of conspiracy to import heroin and of the substantive charge of importation of heroin.

For the foregoing reasons, the judgment convicting Woo is affirmed.

s/

Honorable Richard J. Cardamone,

s/

Honorable Lawrence W. Pierce

s/

Honorable George C. Pratt